

SENATE BILL NO. 154.

Executive Office,
State of Texas.

Austin, April 2, 1909.

To the Secretary of State:

I herewith transmit for file in the office of the Secretary of State Senate bill No. 154 without my approval. This bill adds a number of additional subdivisions to Article 642 of the Revised Civil Statutes of Texas so as to authorize the formation of corporations under the laws of this State for a number of additional purposes. Among the additional subdivisions of Article 642 is Subdivision 75, and if this subdivision should be permitted to become the law by my approval of said Senate bill No. 154, it would have the effect of changing the existing law by adding to the purposes for which a corporation having more than one purpose may be formed, viz.: The manufacture and supply of heat and of distilled water, and by providing that such corporation formed for more than one purpose engaged in the cottonseed oil or compress business shall not be authorized to do business in more than one place and that the charter of any such corporation shall be subject to forfeiture if it transact business in more than one place, or if a majority of its shares of stock shall be acquired or owned directly or indirectly by any other corporation. These are desirable changes in the existing law, but this bill goes further and entirely repeals the appropriate limitation now fixed by law upon the formation of these double purposed corporations which provides:

1. That the authorized capital stock of such corporation shall not exceed \$200,000; and

2. That such corporation shall not be formed to transact business in cities of over 10,000 inhabitants; therefore, if Senate bill No. 154 should become a law a corporation might be formed for all purposes enumerated in said Subdivision 75 with unlimited capital and having full power to transact all the classes of business enumerated in said subdivision in any of the large cities of this State. There is nothing in the caption or on the face of the bill showing that it has this far-reaching effect, and the emergency clause assigns in addition to the crowded condition of the calendar as the reason why the bill should take immediate effect, that there is no law "now authorizing the incorporation of gas, or gasoline, denatured alcohol and naphtha

railways." Thus it will be seen that neither the caption nor the emergency clause discloses the effect of this act.

Said Subdivision 75 reads as follows:

"To include one or more of the following purposes, by original charter or by amendment thereof: The supply of water to the public, the manufacture and supply of ice, gas, heat, electric light and motor power, or either of them, to the public; the manufacture, supply and sale of carbonated and distilled water, and the operation of cottonseed oil mills or cotton compresses; provided, that any such cottonseed oil mill corporation, or cotton compress corporation incorporated under the provisions of this act, engaged in the cottonseed oil business or compress business, or both, shall not be authorized to do business in more than one place in this State, and in case any such corporation shall own or operate more than one such cottonseed oil mill, or cotton compress, or both jointly other than at one place within this State, it shall thereby be liable to a forfeiture of its charter, and it shall be the duty of the Attorney General of Texas to bring suit against any such corporation so offending to forfeit its charter, and if upon a trial of such cause it shall be found that any such corporation has so offended, judgment shall be rendered forfeiting and annulling its charter and nullifying its rights to do business within this State. Venue of any such suit or suits is hereby conferred upon the district court of Travis county, or in the district court of any other county within this State where such corporation may have an office or agent; provided, that corporations which are organized to include more than one of such purposes shall pay the franchise tax assessed by law for each of such purposes; and provided further, that the charter of any such corporation shall be and become void and subject to forfeiture upon suit by the State in the event a majority of its shares of stock shall be acquired or owned, directly or indirectly, by any other corporation."

In 1902 the Supreme Court of Texas, in the case of Ramsey et al. v. Todd, Secretary of State, 95 Texas, 614, decided that under the corporation laws of the State no corporations could be formed for more than one purpose. Following this decision, in 1903, the Twenty-eighth Legislature passed an act providing that private corporations might be created for, or after created, so amended as to include two or more of

the following purposes, viz.:

"The construction or purchase and maintenance of mills and gins; the manufacture and supply to the public by any means of ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either; the harvesting of grain, or the harvesting and threshing of grain; provided, that the authorized capital stock of all incorporations, authorized by this act, shall not exceed \$250,000."

The reasons which impelled the Twenty-eighth Legislature in passing this act, and the idea of the public policy to be subserved by it is shown by the emergency clause, which reads as follows:

"Whereas, there are now many small corporations in the State incorporated under the provisions of the private incorporation act, which include two or more of the purposes mentioned in Article 650a; and, whereas, since this incorporation the Supreme Court has recently held, in effect, that such incorporations are illegal; and, whereas, there is a public necessity that small corporations incorporated for milling and ginning purposes in small towns of the State should be allowed to manufacture, in connection therewith ice, gas, heat and light; therefore, an emergency and imperative public necessity authorizing the suspension of the constitutional rule requiring bills to be read on three several days is created; and it is so suspended, and this act take effect and be in force from and after its passage, and it is so ordered."

In 1905 the Twenty-ninth Legislature somewhat broadened this provision of the law by passing an act providing that corporations might be created for, or after being created, so amended as to include two or more of the following purposes:

"The supply of water to the public, the manufacture and supply of ice, electric light and motor power, or either of them to the public; and the manufacture, supply and sale of carbonated water, and the operation of cottonseed oil mills; provided, that private corporations including more than one of the purposes mentioned in this article in their charters shall each pay the franchise tax as provided by law for each of the purposes included in their respective charters; and provided further, that the authorized capital stock of incorporations authorized by this article shall not exceed \$200,000. The provisions of this act shall not apply to

cities of over 10,000 inhabitants." And stated the emergency demanding the passage of the act to be that there were "many small cities and towns in the State where water and light plants could be more economically operated together than independently to the advantage of citizens in many localities."

In 1907 this law was still further broadened by an act of the Thirtieth Legislature, which constitutes the present law on the subject, and which provides that corporations may be created or amended so as to include any two or more of all the purposes named in Subdivision 75 of Senate bill No. 154, except those of the manufacture and supply of heat and distilled water, as before stated, but this act provides that the authorized capital stock of such corporations shall not exceed \$200,000, and that its provisions shall not apply to cities of 10,000 inhabitants, and the emergency also recited that the immediate taking effect of the act was demanded for the reason that there were "many small cities and towns in the State where water and light plants could be more economically operated together than independently to the advantage of the citizens of many localities."

The present law on this subject, and the acts of the preceding Legislatures upon the same subject before referred to, served, when passed, a useful purpose and were suggested by sound public policy and the danger of baneful monopolies being created under them was rendered impossible; or at any rate, highly improbable, by the very wholesome limitations which they contained as to the amount of authorized capital of such corporations and as to the size of the cities in which they might operate. If Senate bill No. 154 should become the law, these wholesome restraints would be entirely removed and it would be possible for a giant corporation to be formed in any of the larger cities of the State, which by reason of its broad powers might easily monopolize the manufacture and supply of ice, gas, heat, electric light, motor power and carbonated and distilled water, and which, by reason of its peculiar opportunities for profit and for economy in its vast multiple operations, would be able to so hinder or destroy competition by cottonseed oil mills and cotton compresses as to enable it to oppress the producer of cotton seed by lowering the prices paid for it and to increase to the public the price of cottonseed products.

The bill contains a number of whole-

some provisions of additional purposes for which corporations might be formed to the advantage of the public, including one for the incorporation of electric and other motor railway companies, which I think is especially desirable; but the advantages to be gained by having these provisions enacted in the law would be far outweighed by the disadvantages likely to result from the repeal of the present provision, that corporations formed for more than one purpose shall not have an authorized capital stock exceeding \$200,000 and that they shall not be formed to transact business in cities of over 10,000 inhabitants.

If this bill is permitted to become a law it is difficult to see how it would not be possible for a giant monopoly to be formed and operated in the city of Dallas or in any other city of this State which would be as arrogant as the Standard Oil, and as oppressive as any trust that has ever plundered the people of any city or State.

T. M. CAMPBELL,
Governor of Texas.